bill, breaks down, the only ground on which the plaintiff is entitled to maintain a suit in equity or secure an injunction has failed, and the preliminary injunction should be dissolved, the bill dismissed, and the actions at law allowed to proceed. *Storrs* v. *Pensacola, etc. R. R. Co.*, 29 Fla. 617, 634. Otherwise a defendant in numerous actions arising out of the same facts could always transfer the trial of the cases to a court of equity by making the allegations of his bill sufficiently strong. If it be said that this is an objection which only the defendants may make, and which they may waive, we are met by the established rule, subject to a few well defined exceptions not here in point, that affirmative relief can be given to a defendant in equity only on a cross-bill. *Adams* v. *Beideman*, 33 N. J. Eq. 77. And though statutes in Tennessee and other states allow the answer to serve as a cross-bill, they do not alter the further rule that affirmative relief prayed in a cross-bill must be equitable relief. *Lautz* v. *Gordon*, 28 Fed. Rep. 264. The relief given in the principal case was purely legal, and should not have been granted.

Jurisdiction in Habeas Corpus Proceedings. — In a recent New York case a question arose as to the power of the court to issue a writ of *habeas corpus*, where the prisoner had been removed beyond its jurisdiction. Strangely enough, with the single exception of an elaborate discussion by an equally divided court, in a Michigan case, the point has received but slight consideration. *In re Jackson*, 15 Mich. 417. There is, however, some American authority each way upon the subject. *In re Larson*, 31 Hun, 539; *Rivers* v. *Mitchell*, 57 Iowa, 193. In the principal case, the defendant, a New York charitable institution, had been intrusted with a child and had bound it out to service in Illinois. The father sued out a writ of *habeas corpus* in New York to compel the defendant to produce the child. The writ was dismissed on the ground that it did not appear that the defendant had any control over the child. *People* v. *N. Y. Juvenile Asylum*, 68 N. Y. Supp. 279. The court unanimously agreed that the fact that the restraint was being exercised in a foreign jurisdiction would not of itself deprive the court of its jurisdiction. The minority went further, and held that, to excuse itself, the defendant must show that it was absolutely impossible for it in any way to obtain the child. This view is substantially the one adopted in the modern English cases. *Queen* v. *Barnardo*, 24 Q. B. Div. 283.

An examination of the history and principles of the writ does not confirm the court's position. When first the writ was allowed to a father who had been deprived of his child, its operation was confined within narrow limits. Only when the child was not *sui juris* would the court deliver it over to its father or to any one else. Otherwise, the child was merely released and allowed to go where it pleased; it was even allowed to return to the defendant. *Rex* v. *Delaval*, 3 Burr. 1436. The writ was regarded as a prerogative writ, issued on behalf of the sovereign, to inquire into the imprisonment of a subject. Its aim was to remedy a public grievance, and only indirectly to benefit the one who obtained the writ. Obviously, then, the question for the court was not whether a father was deprived of his child, but whether a person was subjected to improper restraint within its limits. A subject may have been kidnapped in the state, but the injury to the state ended when its border line was passed.

A writ of *habeas corpus* never could be used to punish a defendant for improperly seizing a citizen or for illegally deporting him from the state. The defendant may remain within its limits, but it is the presence of the wrong, not the wrongdoer, which gives the jurisdiction. *In re Jackson*, *supra*. This result would not weaken the safeguards of personal liberty. A writ of *habeas corpus* will always issue in the state where the actual restraint is being exercised. If the child is secreted, the common law remedy was by means of a writ *de homine replegiando*, a writ not obsolete in Massachusetts at least. It is true that in some states this writ is abolished, but such a lack of foresight does not justify an improper extension of the writ of *habeas corpus* to serve both purposes. Accordingly, while the result of the principal case is correct, it is to be regretted that the court did not take the opportunity presented firmly to establish the better view which formerly prevailed in New York. *In re Larson*, *supra*.

Specific Performance of Alternative Contracts. — A late and somewhat curious decision of the Supreme Court of Mississippi grants specific performance of a contract, which the court apparently interprets as a true alternative contract, either to convey a certain lot of land or to pay a definite sum of money. *Phillips* v. *Cornelius*, 28 So. Rep. 871. It is said that as the defendant in the suit had refused to perform either alternative, the right of election passed to the plaintiff, who could insist on a conveyance of the land. The court invoke the rule that in contracts where a debtor is bound in an alternative obligation to do one of two things, he has the choice of doing one or the other until the time of payment, or until demand, where no time of performance has been agreed on; and upon the failure of the person thus having the option to elect in proper time, the right of election passes to the opposite party. *Corbin* v. *Fairbanks*, 56 Vt. 538. The citations given in support of this rule lend it a certain plausibility, but are in no way conclusive, and it is impossible on principle to assent to such a proposition. In alternative contracts it is a general rule that the damages in case of a breach are the value of the least beneficial alternative, whereas if the right of election passed to the plaintiff it would follow that he could choose the more valuable. 1 Sedgwick, Damages, § 421. There is but one line of cases that seems inconsistent with this view. In notes where the promisor has the option to pay in money, or in a certain number of specific articles, if he does not exercise that option before the day of payment, it is said that the promisee is entitled to the money. *Roberts* v. *Beatty*, 21 Am. Dec. 410, note, p. 422. The cases, however, may be explained on the ground that the amount of money mentioned in the note is in the nature of a stipulation for liquidated damages. In *Corbin* v. *Fairbanks*, *supra*, the court flatly say that the right of election in an alternative contract passes to the plaintiff on the defendant's default, but it is to be noted that the plaintiff in that case was seeking to recover money, and the court presumably regarded that alternative as a liquidation of the damages. A distinction must be drawn between a contract to convey land, or to pay a certain sum of money as liquidated damages, and a purely alternative contract. A purely alternative contract must not only be alternative in form, but it must appear that the parties intended that the promisor could satisfy his promise equally well by performing either branch. Where such an inten-